85TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
2d Session } { No. 1350

PROVIDING TAX RELIEF TO THE HEAVY AND GENERAL LABORERS' LOCAL UNIONS 472 AND 172 OF NEW JERSEY PENSION FUND AND THE CONTRIBUTORS THERETO

FEBRUARY 19, 1958.—Committed to the Committee of the Whole House and ordered to be printed

Mr. CRAMER, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 5219]

The Committee on the Judiciary, to whom was referred the bill (H. R. 5219) to provide tax relief to the Heavy and General Laborers' Local Unions 472 and 172 of New Jersey pension fund and the contributors thereto, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE

The purpose of the proposed legislation is to provide that the Heavy and General Laborers' Local Unions 472 and 172 of the New Jersey pension fund created July 1, 1953, shall be deemed to have met the requirements of section 401 (a) of the Internal Revenue Code of 1954 and shall be deemed to be exempt from tax under section 501 (a) of the Internal Revenue Code of 1954 and section 165 (a) of the Internal Revenue Code of 1939 for the period beginning July 1, 1953, and ending November 8, 1956.

STATEMENT

On July 1, 1953, the International Hodcarriers' Building and Common Laborers' Union of America, Locals 472 and 172 of the State of New Jersey, executed collective bargaining agreements with various employers through the Associated General Contractors of New Jersey. Under the terms of those agreements the participating employers were required to make periodical payments to a pension fund for the purpose of providing pension benefits for eligible employees of the locals concerned. In accordance with these agreements

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the International Hod Carriers Building and Common Laborers' Union of America, Locals Nos. 472 and 172 of the State of New Jersey, and the Associated General Contractors of New Jersey entered into a trust agreement to provide pension benefits for union employees of the employers. The agreement provided that an employer would become a party to the agreement if he contributed to the pension fund and satisfied the requirements for participation in the fund as established by the insurance carriers of the insurance forming part of the fund.

The agreement was drafted so as to follow the general form used in 1950 when the association and the locals set up a welfare fund which provided hospital, medical, and surgical benefits for members of the locals and their dependents. The employers financed the welfare fund completely, and the contributions to the fund had been approved by the Internal Revenue Service as exempt from income tax under the applicable provisions of the Internal Revenue Code. It was assumed by the employers that their contributions to the pension fund would be accorded the same tax status. However in following the welfare fund form, language was inadvertantly included which subsequently was objected to by the Internal Revenue Service with the result that it ruled that employers were not to be permitted to deduct contributions made to the pension fund. The position taken by the Government was that in order for such deductions to be made the fund had to meet certain requirements. The fund had to be for the definite purpose of distributing to the employees or their beneficiaries the corpus and income of the fund. Further it had to be impossible for any part of the corpus or income to be diverted to purposes other than the exclusive benefit of the employees or their beneficiaries until such time as all liabilities as to such employees or their beneficiaries had been satisfied. The Internal Revenue Service stated that the agreement provided that an employer would become a party to the agreement if he contributed to the pension fund and satisfied the requirements for participation in the fund as established by the insurance carriers of the policies of insurance forming part of the fund, and then provided that if an employer did not meet these requirements, his contributions would not become part of the fund and would be returned to him. Under the circumstances the ruling of the Government was that the amounts contributed by the employers were not actually committed for payments of benefits to employees or beneficiaries. The Internal Revenue Service also noted that the agreement stipulated that no employee would "have any right, title or interest in or to the fund or any part thereof," and that pension payments would be discontinued if an employee ceased to be a member in good standing of the union by reason of nonpayment of dues. In short the holding was that rulings of the Service required that a retired employee must in general have fully vested rights to the stipulated benefits under the plan. This ruling was not made until the middle of 1956, 3 years after the original agreement had been made. In the meantime substantial sums had been paid by employers to the fund. Changes were made in the conditions of the plan, and the Internal Revenue Service ruled that the plan met the requirements of a qualified plan as of November 8, 1956. However the Service ruled that the plan did not qualify for the period prior to that date.

The committee has carefully considered this matter and has determined that it is a proper matter for legislative relief. On January

29, 1958, Subcommittee No. 2, the subcommittee with jurisdiction over claims, held a hearing, and the testimony presented at that hearing shows that the disallowal by the Internal Revenue Service was the direct result of the erroneous inclusion of the language taken from the welfare-fund agreement. That language has relevancy in the welfare fund, but had none whatsoever in the pension fund. As a matter of fact, the funds contributed to the plan were at all times dedicated and committed for the purpose of the plan, and rights of all employees, as a class, in the fund had fully vested. Therefore the changes in the plan as approved on November 8, 1956, merely conformed the provisions to the existing situation.

These facts are reflected in the Treasury report to this committee dated January 22, 1958. This statement was made in that report:

> It seems clear that the initial intentions of both the employers and the unions in this case were to meet the requiremens for qualified pension plans and that the failure to meet these requirements was inadvertent. In fact, no contributions were ever withdrawn by employers and the fund has never been operated in a manner which would jeopardize the interests of the employee-beneficiaries. Moreover, all of the modifications which have been incorporated in the plan to meet the qualification requirements have been made retroactive to the inception of the plan. As stated in our report of August 8, 1957, the Department is opposed to retroactive relief measures. Nevertheless, it appears that the failure of the pension fund in question to meet the requirements of section 401 (a) of the 1954 code prior to November 8, 1956, was due in large measure to matters of form rather than substance and that accordingly the objectives sought by the enactment of H. R. 5219 are not inequitable.

This committee has concluded that in the light of this favorable view now taken by the Treasury, and in view of the fact that it is clear that the fund has never been operated in a manner which would jeopardize the interests of its beneficiaries that it is only just to approve the relief which would be accorded by the enactment of H. R. 5219. The agreement has been changed so as to conform with the requirements of the Internal Revenue Service and the trust agreement has been approved by that Service. Without the relief provided for in the bill all of the contributions made to the fund by contractors during the period from July 1, 1953, through November of 1956 will be disallowed for tax purposes. Further, the committee has been informed that the trust itself will be subjected to the payment of income tax in an amount approximating $51,000 if the relief provided for in the bill is not granted. This is the reason for the provision in the bill that the pension fund is to be deemed exempt from tax under section 501 (a) of the Internal Revenue Code of 1954 and section 165 (a) of the Internal Revenue Code of 1939 for the period beginning July 1, 1953, and ending November 8, 1956. Such a result would obviously be unfair and prejudice the interests of the employees who are the beneficiaries of the trust. Therefore this committee recommends that the bill be considered favorably.

OFFICE OF THE SECRETARY OF THE TREASURY,
Washington, January 28, 1958.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D. C.

MY DEAR MR. CHAIRMAN: This is in reply to your request of December 17, 1957, for supplementary views of the Treasury Department on H. R. 5219, which would provide tax relief to the Heavy and General Laborers' Local Unions 472 and 172 of New Jersey pension fund and the contributors thereto. In response to an earlier request, the Department submitted a report on this bill on August 8, 1957. Subsequent to that report, certain additional information has been provided by the parties involved which justifies a reexamination of the merits of the legislation.

As our previous report indicated, the Internal Revenue Service has ruled that the Heavy and General Laborers' Local Unions 472 and 172 of New Jersey pension fund met the requirements for qualification under the Internal Revenue Code as of November 8, 1956. During the period from July 1, 1953, when the original plan for the fund was adopted, and November 8, 1956, the fund did not meet these qualification requirements. The Internal Revenue Service ruling to the effect that the plan met the qualification requirements as of November 8, 1956, was based on changes which were made in the original plan. These changes, for example, fulfill the requirement that qualified plans must generally grant covered employees who retire vested rights to stipulated benefits. They also definitely commit amounts contributed by employers for the purpose of paying benefits to covered employees and beneficiaries. It may be noted that these changes which permitted the plan to qualify as of November 8, 1956, were made retroactive to July 1, 1953.

H. R. 5219 provides that the pension fund of the Heavy and General Laborers' Local Unions 472 and 172 of New Jersey is to be deemed a qualified pension plan for the period from July 1, 1953, to November 8, 1956. This would have the effect of allowing employers to deduct contributions made to the plan during this period for the year that such contributions were made. In addition, it would exempt from tax income earned by the fund during this period which would otherwise be taxable.

It seems clear that the initial intentions of both the employers and the unions in this case were to meet the requirements for qualified pension plans and that the failure to meet these requirements was inadvertent. In fact, no contributions were ever withdrawn by employers and the fund has never been operated in a manner which would jeopardize the interests of the employee-beneficiaries. Moreover, all of the modifications which have been incorporated in the plan to meet the qualification requirements have been made retroactive to the inception of the plan. As stated in our report of August 8, 1957, the Department is opposed to retroactive relief measures. Nevertheless, it appears that the failure of the pension fund in question to meet the requirements of section 401 (a) of the 1954 Code prior to November 8, 1956, was due in large measure to matters of form rather than substance and that accordingly the objectives sought by the enactment of H. R. 5219 are not inequitable.

The Director, Bureau of the Budget, has advised the Treasury Department that there is no objection to the presentation of this report.

Sincerely yours,

DAN THROOP SMITH,
Deputy to the Secretary.

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